

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LARISA KULINICH,

Plaintiff,

CIV. S-03-1155 GEB PAN

v.

JO ANNE B. BARNHART,
Commissioner of Social
Security,

Findings and Recommendation

Defendants.

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Pursuant to 42 U.S.C. § 405(g), plaintiff requests this court review defendant's decision denying plaintiff supplemental security income benefits.

If the claimant meets eligibility requirements, the Commissioner bases his decision upon a five-step analysis. First, the claimant must not currently be working. 20 C.F.R. § 416.920(b). Second, the claimant must have a "severe" impairment. 20 C.F.R. § 416.920(c). Third, the medical evidence

1 of the claimant's impairment is compared to a list of impairments
2 that are presumed severe enough to preclude work; if the
3 claimant's impairment meets or equals one of the listed
4 impairments, benefits are awarded. 20 C.F.R. § 416.920(d).
5 Fourth, if the claimant can do his past work benefits are denied.
6 20 C.F.R. § 416.920(e). Fifth, if the claimant cannot do his
7 past work and, considering the claimant's age, education, work
8 experience, and residual functional capacity, cannot do other
9 work that exists in the national economy, benefits are awarded.
10 20 C.F.R. § 416.920(f).

11 Defendant found plaintiff was eligible, suffered from
12 hepatitis C but no listed impairment, that she could not perform
13 her past work but did retain the physical capacity for medium
14 work and, based upon the medical-vocational guidelines, is not
15 disabled. Tr. 9-16.

16 This court must uphold the Commissioner's determination
17 that a plaintiff is not disabled if the Commissioner applied the
18 proper legal standards and if the Commissioner's findings are
19 supported by substantial evidence. Sanchez v. Secretary of
20 Health and Human Services, 812 F.2d 509, 510 (9th Cir. 1987).
21 The question is one of law. Gonzalez v. Sullivan, 914 F.2d 1197,
22 1200 (9th Cir. 1990). Substantial evidence means more than a
23 mere scintilla, Richardson v. Perales, 402 U.S. 389, 401 (1971),
24 but less than a preponderance, Bates v. Sullivan, 894 F.2d 1059,
25 1061 (9th Cir. 1990). It means such relevant evidence as a
26 reasonable mind might accept as adequate to support a conclusion.

1 Richardson, 402 U.S. at 401. The court cannot affirm the
2 Commissioner simply by isolating supporting evidence but must
3 consider the entire record, weighing evidence that undermines as
4 well as evidence that supports the Commissioner's decision.
5 Gonzalez v. Sullivan, 914 F.2d at 1200. If substantial evidence
6 supports administrative findings, or if there is conflicting
7 evidence that will support a finding of either disability or
8 nondisability, the finding of the Commissioner is conclusive,
9 Sprague v. Bowen, 812 F.2d 1226, 1229-30 (9th Cir. 1987), and may
10 be set aside only if the proper legal standards were not applied
11 in weighing the evidence, Burkhart v. Bowen, 856 F.2d 1335, 1338
12 (9th Cir. 1988).

13 Plaintiff claims there is no evidence to support the
14 finding plaintiff can perform medium work and that defendant
15 erred in failing to develop the record, rejecting plaintiff's
16 subjective complaints and the opinion of a treating physician.

17 When plaintiff applied she identified Dr. Sparti as her
18 treating physician. Tr. 51. Dr. Sparti's records are
19 incomprehensible to the court. Plaintiff claims that Dr.
20 Sparti's records demonstrate many ailments, e.g., "post-CVA,"
21 angina, facial neuralgia, post-Bell's palsy, atherosclerosis,
22 history of cholelithiasis, gallstones, history of radiation
23 exposure, hypothyroidism, radicular back pain, osteoarthritis,
24 and liver disease. The administrative law judge addressed none
25 of these alleged findings though defendant does not now dispute
26 that Dr. Sparti made them. Plaintiff also points to the opinion

1 of another physician who has treated plaintiff, Dr. Arnold
2 Greenberg, who reported plaintiff is severely disabled. Tr. 125-
3 128. Defendant contends this record was properly rejected
4 because it was inconsistent with other medical evidence, but does
5 not point to such other evidence or explain why it should be
6 preferred.

7 Review of the entire record permits no conviction that
8 hepatitis is plaintiff's only severe impairment nor that
9 defendant has properly identified all of the pertinent
10 consequences of the disease upon plaintiff's ability to work. I
11 find the record is inadequately developed and recommend the
12 decision be reversed and remanded to obtain qualified
13 interpretation of the medical evidence and if defendant believes
14 the opinions of treating physicians require further explanation
15 to request it.

16 These findings and recommendations are submitted to the
17 Honorable Garland E. Burrell, Jr., the United States District
18 Judge assigned to this case. 28 U.S.C. § 636(b)(1). Written
19 objections may be filed within ten days after being served with
20 these findings and recommendations. The document should be
21 captioned "Objections to Magistrate Judge's Findings and
22 Recommendations." The failure to file objections within the
23 specified time may waive the right to appeal the District Court's

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1 order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

2 Dated: May 23, 2005.

3 /s/ Peter A. Nowinski

4 PETER A. NOWINSKI

5 Magistrate Judge